IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Revision No. 694/2001
(Old No. 1144 of 1985)

Hira Ram and other ……Revisionists

Versus

1. State of U.P.
2. Lachman Ram …….Respondents

Hon'ble Irshad Hussain, J.

Heard Sri J.C.Joshi learned counsel for the revisionists and learned A.G.A. Respondent no.2 who was personally served but is absent. Perused the record.

In criminal case no.11/1 of 1984 under Section 145 of the Code of Criminal Procedure (for short 'Code'), the Sub Divisional Magistrate dropped the proceedings under Section 145(8) of the 'Code in view of the fact that the agricultural land was recorded in the name of the parties to the proceedings and it was also reported that a suit for partition was pending before the revenue court. Even otherwise, the land was the joint holding of the parties therefore the proceedings under Section 145 of the Code could not have been drawn. Aggrieved by the order of the learned Sub-Divisional Magistrate passed on 23.6.1984 the respondent no.2 filed a revision before the learned Sessions Judge which was allowed per judgment and order dated 12.4.1985 on the premise that no finding was recorded by the learned Magistrate that the apprehension of breach of peace does not exist in relation to the dispute pertaining to the agricultural land. On the face of the facts of the case, when a suit for partition of the holdings had already been field it was evident that there was not apprehension of breach of peace and any of the party to the proceeding before the revenue court could have also obtained an interim order in regard to the possession of the holding. Considering this the learned Sessions Judge was not justified in interfering with the order of the dropping of the proceedings passed by the Magistrate concerned and, therefore, the judgment and order dated 12.4.1985 suffer from vice of impropriety.

The revision is allowed, the judgment and order dated 12.4.1985 is set-aside and the order dated 23.6.1984 of the Sub-Divisional Magistrate is hereby affirmed.

(Irshad Hussain, J.)

Dated 25.03.2004
Rawat